

*FCC Received October 20, 1997 @ 11:05 a.m.*  
*Donna G. Bradshaw*

ORIGINAL

## FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:	)	WT DOCKET No.: 97-199
	)	
WESTEL SAMOA, INC.	)	File No. 00560-CW-L-96
	)	
For Broadband Block C.	)	
Personal Communications	)	
Systems Facilities	)	
	)	
and	)	
	)	
WESTEL, L.P.	)	File Nos. 00129-CW-L-97
	)	00862-CW-L-97
For Broadband Block F	)	00863-CW-L-97
Personal Communications	)	00864-CW-L-97
Systems Facilities	)	00865-CW-L-97
	)	00866-CW-L-97
and	)	
	)	
ANTHONY T. EASTON	)	

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Date: October 15, 1997

### HERITAGE REPORTING CORPORATION

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1220 L Street, NW, Suite 600  
Washington, D.C.  
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Washington, D.C. 20554

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ANTHONY T. EASTON	)	

Courtroom 1  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Wednesday,  
October 15, 1997

The parties met, pursuant to the notice of the  
Judge, at 10:02 a.m.

BEFORE: HON. ARTHUR I. STEINBERG  
Administrative Law Judge

Heritage Reporting Corporation  
(202) 628-4888

## APPEARANCES:

On Behalf of the Wireless Telecommunications  
Bureau:

JOSEPH PAUL WEBER, ESQUIRE  
KATHERINE C. POWER, ESQUIRE  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, Northwest  
Washington, D.C. 20554  
(202) 418-1317  
APPEARANCES:

On behalf of Westel Samoa, Westel, L.D.  
and Anthony T. Easton:

A. THOMAS CARROCCIO, ESQUIRE  
BRIAN COHEN, ESQUIRE  
ROSS A. BUNTROCK, ESQUIRE  
Bell, Boyd, & Lloyd  
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## I N D E X

WITNESS:PAGE

None.

Hearing Began: 10:02 a.m.      Hearing Ended: 11:10 a.m.

Heritage Reporting Corporation  
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P R O C E E D I N G S

JUDGE STEINBERG: On the record.

This is the initial prehearing conference in WT Docket No. 97-199, involving applications filed by Westel Samoa, Inc. and Westel, L.P. for personal communications facilities.

According to the order designating this case for hearing, substantial and material questions of fact exist concerning the basic qualifications of Quentin L. Breen, Westel's controlling principal, to be a Commission's licensee.

In addition, the designation order directed Anthony T. Easton, a former officer and director of PCS 2000, L.P., to show cause why he should not be barred from holding any Commission authorizations. Because the issues concerning Mr. Breen and Mr. Easton arose from common facts and circumstances, the Commission consolidated the proceedings for hearing.

Let me first take the appearances of the parties? Westel Samoa, Inc. and Westel, L.P.?

MR. CARROCCIO: Thomas Carroccio, Brian Cohen, and Ross Buntrock of Bell, Boyd & Lloyd.

JUDGE STEINBERG: Okay, which is which?

MR. COHEN: I am Brian Cohen, Your Honor.

MR. CARROCCIO: And Mr. Buntrock.

1 JUDGE STEINBERG: And for Anthony T. Easton?

2 (No response.)

3 JUDGE STEINBERG: Let the record reflect no  
4 response.

5 In that connection, I got a letter and I suppose  
6 counsel for both parties got a letter from the law firm of  
7 Lukas, McGowan, Nace & Gutierrez. I apologize if I garbled  
8 any pronunciations. A letter dated September 29, 1997,  
9 which states in pertinent part, "This office represents  
10 Anthony T. Easton. We are submitting this letter to notify  
11 you that Mr. Easton will not be submitting a Notice of  
12 Appearance in this matter," and then it goes on to state  
13 why.

14 And also Mr. Easton filed a petition for  
15 reconsideration of the order designating this case for  
16 hearing. It's dated October 6, 1997. I presume that's the  
17 date it was filed. I haven't received a filed copy. He is  
18 challenging the hearing designation order with respect to  
19 himself. But it's addressed to the Commission, so I don't  
20 have to worry about that; only Mr. Weber does.

21 Okay, on behalf of the Chief, Wireless  
22 Telecommunications Bureau?

23 MR. WEBER: Joseph Weber and Katherine Power.

24 JUDGE STEINBERG: Okay. Now, I will return to the  
25 letter later. I have some questions that I want to ask

1 about it.

2 The first matter of business I have a question,  
3 and that is, should Mr. Breen be made a party to this  
4 proceeding in light of the fact that he's the specific  
5 subject of Issues 2(a) and 2(b), and also, because he may be  
6 personally liable for forfeiture.

7 And let me note that Mr. Carroccio filed a Notice  
8 of Appearance on behalf of Mr. Breen even though he wasn't  
9 named a party.

10 Let me hear what Mr. Carroccio has to say about  
11 that.

12 MR. CARROCCIO: Good morning, Your Honor.

13 Yes, that is correct, we did file a Notice of  
14 Appearance because we believe Mr. Breen is effectively a  
15 party to this proceeding.

16 Paragraph 51 of the hearing designation order  
17 indicates that an issue will be added to determine whether  
18 Mr. Breen made or caused to be made material  
19 misrepresentations or lack of candor.

20 As Your Honor has already noted, Issue 2, (a) and  
21 (b), goes to Mr. Breen's qualifications. Paragraph 54  
22 direct Your Honor to determine whether an order of  
23 forfeiture should be issued against Mr. Breen. And  
24 paragraph 59 includes Mr. Breen among those who are to be  
25 served with a copy of this hearing designation order.

1           It appears fairly -- I'm sorry -- yes, that's 59.  
2     It appears fairly clear that Mr. Breen is a critical element  
3     in this proceeding. Mr. Breen is the subject of this  
4     proceeding, a subject of this proceeding, and Mr. Breen  
5     would appear to be a party in everything except the  
6     designation in the caption.

7           We would -- we filed a Notice of Appearance timely  
8     in order to preserve whatever status as a party Mr. Breen  
9     has, and his right to participate. If Your Honor determines  
10    that he is not in fact a party, we stand ready to file an  
11    appropriate notice -- motion for intervention. We would  
12    also note in that regard, Your Honor, that we were informed  
13    upon inquiry to the Federal Register that the notice of this  
14    hearing is being published today in the Federal Register.  
15    So the time will begin to run. We are informed that it will  
16    be at page 53-629 of today's Federal Register.

17           Your Honor, we would also point out that in  
18    previous proceedings before the Commission Mr. Breen was  
19    noted as having possibly been involved in misrepresentations  
20    or lack of candor. And it was indicated that Mr. Breen  
21    would be -- his qualifications would be addressed in the  
22    context of a proceeding involving the Westel applications.

23           I would, in that regard, specifically cite Your  
24    Honor to paragraph 50 of the Notice of Apparent Liability  
25    regarding PCS 2000, L.P. I believe that can be found at 12



1 FCC record 1703. That was issued in January of this year.

2 JUDGE STEINBERG: Okay, let me hear from Mr. Weber  
3 or Ms. Power.

4 MR. WEBER: The Bureau has no objection to Mr.  
5 Breen's submission as a party to the proceeding.

6 JUDGE STEINBERG: Okay. Mr. Breen is considered a  
7 party to the proceeding, or should I say to the extent that  
8 that was an oral motion to make Mr. Breen a party to the  
9 proceeding, it's granted without objection, and the Notice  
10 of Appearance is accepted.

11 Now, I know nunc pro tunc means now for then, so I  
12 guess it's accepted tunc pro nunc.

13 (Laughter.)

14 JUDGE STEINBERG: But if Judge Tierny was here,  
15 you may remember Judge Tierny, he would have known the Latin  
16 for that.

17 Okay, the second item that I have is with respect  
18 to Mr. Easton, and, Mr. Carroccio, did you receive the  
19 Lukas, McGowan latter?

20 MR. CARROCCIO: We have received both the Lukas,  
21 McGowan letter indicating that there would be no appearance  
22 entered on behalf of Mr. Easton. We also were also served  
23 with a copy of the petition for reconsideration.

24 JUDGE STEINBERG: Okay, Mr. Weber, same question.

25 MR. WEBER: Yes, we received both.

1 JUDGE STEINBERG: Okay, let me just ask whether,  
2 in your opinions, Mr. Easton has waived the hearing pursuant  
3 to 1.92(a)(1) of the rules. If you are not familiar with  
4 the rules, I have got them here.

5 MR. CARROCCIO: Your Honor, Mr. Easton has not  
6 timely filed a Notice of Appearance. He has sought  
7 alternative remedies. We at this time would -- our position  
8 would be that Mr. Easton still has to be put to the test, at  
9 least through a showing against him in this proceeding or  
10 another proceeding. We are adamant, however, that since he  
11 has not timely filed an appearance here, that his  
12 nonappearance should in no way delay this proceeding going  
13 forward with regard to the Westel applicants or Mr. Breen.

14 JUDGE STEINBERG: Okay. Mr. Weber?

15 MR. WEBER: The Bureau actually has to agree with  
16 Mr. Carroccio on that point about delaying. We are also  
17 opposed to delaying this proceeding.

18 The Bureau expects tomorrow to be filing an  
19 opposition to Mr. Easton's petition for reconsideration, in  
20 which we do demonstrate how the Commission does have, or at  
21 least we believe we will demonstrate how the Commission has  
22 jurisdiction over Mr. Easton, and how he was properly made a  
23 party to this proceeding. And from the fact he did not file  
24 a Notice of Appearance, to the extent that he has now waived  
25 his right to a hearing, we may have to address that at a

1 later point when the Commission addresses the petition for  
2 reconsideration.

3 JUDGE STEINBERG: Okay. Now, my problem is that  
4 under Section 1.92(c) of the rules -- 1.92 of the rules,  
5 this is a show cause proceeding as it pertains to Mr.  
6 Easton, and a show cause proceeding is governed by 1.91 and  
7 1.92 of the rules. And under 1.92 of the rules it says  
8 that, "the following actions will constitute a waiver of the  
9 hearing," and one of them is "the Respondent fails to file a  
10 timely written appearance."

11 Then we get to Part -- excuse me -- Subsection (c)  
12 of 1.92 where it says, "Whenever a hearing is waived by the  
13 occurrence of any of the events," namely, by -- you know,  
14 one of the things was not filing a Notice of Appearances,  
15 "the presiding judge," that's me, "shall at the earliest  
16 practicable date issue an order reciting the events and  
17 circumstances constituting a waiver of a hearing,  
18 terminating the hearing proceeding and certifying the case  
19 to the Commission."

20 Obviously, I'm not going to terminate the whole  
21 hearing, but I think under that rule what I have got to do  
22 is issue an order briefly reciting the circumstances;  
23 namely, the hearing designation order was issued. It  
24 directed -- it didn't direct -- it gave Mr. Easton the  
25 opportunity to file a Notice of Appearance by letter dated

1     whatever. He said he wasn't filing a Notice of Appearance.  
2     Pursuant to this 1.92(a)(1) that constitutes a waiver of his  
3     right to hearing. And also under 1.221(e) he's forfeited his  
4     hearing rights, and therefore I am certifying the matter to  
5     the Commission, and also I can terminate or delete Issue 1  
6     because that's the only issue that pertains to Mr. Easton  
7     and doesn't affect Issue 2 and 3.

8             Does anybody have any problem with that? Mr.  
9     Carroccio?

10            MR. CARROCCIO: No, Your Honor. The only thing I  
11     might suggest is that you do note to the -- as part of your  
12     certification that Mr. Easton has filed a petition for  
13     reconsideration.

14            JUDGE STEINBERG: Yes.

15            MR. CARROCCIO: I think out of both fairness to  
16     the Commission and to Mr. Easton.

17            JUDGE STEINBERG: Presumably they would know that,  
18     but who knows what they know.

19            Mr. Weber, do you have any problem with that?

20            MR. WEBER: No objection, Your Honor.

21            JUDGE STEINBERG: Okay. So that's what I will do  
22     with respect to Mr. Easton, and I presume we will see Mr.  
23     Easton sitting in one of the chairs in this courtroom;  
24     perhaps one next to me, but that's up to you guys.

25            Okay, now, the next thing I have is settlement.

1 Has anybody talked at all about settling this case?

2 MR. CARROCCIO: We really haven't, Your Honor.

3 JUDGE STEINBERG: Is anybody interested in talking  
4 about settlement?

5 MR. CARROCCIO: Mr. Breen and Westel facing  
6 enormous hearing costs would, of course, be interested in  
7 settling. And I think that anything we would be interested  
8 in hearing anything that the Bureau might find acceptable or  
9 we would be willing to make a proposal if the Bureau was  
10 receptive to a proposal.

11 JUDGE STEINBERG: Mr. Weber?

12 I forced one on you. Let me see --

13 (Laughter.)

14 MR. WEBER: The Bureau is always is willing to  
15 talk settlement. However, I forget the exact rule, and I  
16 think it's in the 1.900s, 1.932 perhaps if my memory is not  
17 failing me, really prohibits settlements in cases that have  
18 character issues.

19 JUDGE STEINBERG: I think what you're talking  
20 about is the consent order section, and I don't know the  
21 rule number off the top of my head. But you can settle and  
22 not have a consent order. I think if there is a  
23 misrepresentation question involved, then you can't have a  
24 consent order. But you can have a settlement that doesn't  
25 involve a consent order.

1           What I would say is please don't close to the door  
2 to settlement, and if it takes Mr. Carroccio to make an  
3 offer to you and you to make a counteroffer, then maybe  
4 that's the way we should proceed. Of course, it's obviously  
5 better to reach a settlement that nobody is happy with than  
6 to reach a conclusion to a hearing which only one party is  
7 happy with; perhaps not even that one party.

8           If you need me to facilitate a settlement, if you  
9 just can't get any further, you know, give me a call and we  
10 will have a meeting and see what I can do. Or if you want  
11 me to set a date by which you've got to talk settlement, I  
12 will do that.

13           Anybody have any -- does anybody want me to do  
14 that? Let's say by November 15th you guys have to get  
15 together and at least explore settlement?

16           MR. WEBER: We would be happy to do that by  
17 November 15th; at least the Bureau would.

18           MR. CARROCCIO: Your Honor, before we get to that  
19 point might I suggest that as we proceed and if we discuss  
20 maybe some stipulations in this proceeding, we may put this  
21 in a posture where a settlement is more approachable. Maybe  
22 if you would want to revisit the possibility of settlement  
23 towards the end of this prehearing conference.

24           JUDGE STEINBERG: Okay, I will note to talk about  
25 stipulations too. From reading the designation order, it

1 appears to me like there is an absolute ton of stuff that  
2 can be stipulated to.

3 MR. CARROCCIO: We would hope so, Your Honor.

4 JUDGE STEINBERG: Okay. Any questions regarding  
5 the scope of the issues?

6 MR. CARROCCIO: Your Honor, we would ask, now that  
7 we have the Federal Register publication, we are prepared to  
8 seek the addition of another issue; specifically, going to  
9 whether or not Mr. Breen possesses the necessary character  
10 qualifications to be a Commission licensee.

11 JUDGE STEINBERG: A specific issue?

12 MR. CARROCCIO: Yes, Your Honor.

13 JUDGE STEINBERG: As to sort of like Issue 3 but?

14 MR. CARROCCIO: But to Mr. Breen as opposed to  
15 Westel. It would be the equivalent of three. It would be  
16 an additional issue. It would go only to Mr. Breen.

17 JUDGE STEINBERG: Well, you can always modify it  
18 by saying "and/or Mr. Breen."

19 MR. CARROCCIO: A modification --

20 JUDGE STEINBERG: But I --

21 MR. CARROCCIO: To put it in context, Your Honor,  
22 Mr. Breen, as noted in both the Notice of Apparent Liability  
23 that I cited to Your Honor earlier, and in an accompanied  
24 memorandum and opinion and order that could be found at 12  
25 FCC Record 1681, again, with regard to the applications of

1 PCS 2000, L.P., it's been noted that Mr. Breen in the course  
2 of the processing and consideration of the PCS 2000  
3 applications withdrew as a principal of that organization in  
4 order to clear the record.

5 Specifically, though, Mr. Breen and the corporate  
6 general partner of PCS 2000, which by the way is now known  
7 as ClearComm, entered into a warrant agreement whereby Mr.  
8 Breen may obtain 19.6 percent of the stock of ClearComm --  
9 of the SuperTel, the corporate general partner, if two  
10 conditions are met:

11 One, that PCS 2000 is awarded its licenses. That  
12 event has taken place. That was done by the memorandum  
13 opinion and order that I cited to Your Honor.

14 The second condition was that Mr. Breen would be  
15 determined to have the necessary qualifications to be a  
16 Commission licensee. In the Notice of Apparent Liability  
17 that we cited to Your Honor earlier, at paragraph 50 of that  
18 Notice of Apparent Liability the Commission indicated, and I  
19 am quoting, "We will address our concerns regarding Mr.  
20 Breen's involvement in PCS 2000's deception in the context  
21 where Mr. Breen has an ownership and/or controlling interest  
22 in these markets," referring to the Westel markets, "and  
23 make a determination therein whether Mr. Breen possesses the  
24 requisite character qualifications to hold a Commission  
25 license."



1 I would submit, Your Honor, that this is that  
2 proceeding, and Mr. Breen is entitled to have his  
3 qualifications individually addressed and ruled upon.

4 JUDGE STEINBERG: They are also saying RHDO in  
5 paragraph 46, percent.

6 MR. CARROCCIO: But, Your Honor --

7 JUDGE STEINBERG: They raise the question.

8 MR. CARROCCIO: Oh, yes, I'm sorry, Your Honor.  
9 Yes, but there is not an issue specified --

10 JUDGE STEINBERG: Right.

11 MR. CARROCCIO: -- to that point. We are prepared  
12 to make a formal petition to enlarge under 1.229.

13 JUDGE STEINBERG: Why don't you do that, and then  
14 Mr. Weber can respond unless he knows right now he wouldn't  
15 have any objection to it. But why don't we do in the  
16 regular course of business.

17 MR. CARROCCIO: That's fine.

18 JUDGE STEINBERG: If it turns out -- you might  
19 talk to Mr. Weber about it, and Ms. Power about it, and if  
20 they don't have any objection, then you might file a joint  
21 motion or a consent motion to modify Issue 3 and/or Issue 4  
22 concerning Mr. Breen.

23 I kind of thought that it was all -- that the way  
24 this case is structured it's going to be pretty obvious what  
25 the conclusion is going to be with respect to Mr. Breen

1 unless you attempt to somehow separate him from Westel.

2 MR. CARROCCIO: Your Honor.

3 JUDGE STEINBERG: We might be able to draw one  
4 conclusion about Westel, another conclusion about Mr. Breen.

5 That brings me back to something that I wanted to  
6 say with respect to Mr. Breen's party status. You're  
7 representing both Westels and Mr. Breen. There might come a  
8 point in time where there is a conflict there.

9 MR. CARROCCIO: We understand that, Your Honor.

10 JUDGE STEINBERG: And if the conflict develops,  
11 then, of course, you have obligations under the ethics rules  
12 to pick and choose. But I just wanted -- obviously, you  
13 know about that. And if we come to that point, I trust that  
14 something will be done.

15 MR. CARROCCIO: Your Honor, Mr. Breen is the sole  
16 controlling individual of both Westel Samoa and Westel, L.P.  
17 The two are inextricably intertwined, and the real question  
18 is the limited partners or noncontrolling interests in those  
19 who are aware of and have indicated their acquiescence in  
20 this matter.

21 JUDGE STEINBERG: Okay. Okay, any other questions  
22 with respect to the scope of the issues? Mr. Weber?

23 MR. WEBER: No, Your Honor.

24 JUDGE STEINBERG: Okay. Does anybody know today  
25 what the nature of the evidence under the issues is going to

1 be, like under Issue 2, 2(a) and 2(b); what type of evidence  
2 is going to come in?

3 I guess Mr. Weber has got the burdens.

4 MR. WEBER: No, Your Honor, as to 2(a) and 2(B),  
5 Mr. Breen and Westel have the burdens.

6 JUDGE STEINBERG: Did I --

7 MR. WEBER: The Bureau would have had the burden  
8 if he --

9 JUDGE STEINBERG: You are right. I apologize.  
10 Yes. I had it written down -- I misspoke.

11 MR. CARROCCIO: Your Honor, we do have some, but  
12 before we talk about the evidence that we would see coming  
13 in, I think there is an issue, an evidentiary issue that has  
14 to be address up front in all of this. And that is the  
15 probative value, or even the admissibility of what is  
16 referred to throughout the hearing designation order as the  
17 independent counsel's report.

18 This document is one that was prepared at the  
19 behest of PCS 2000 by counsel that was brought in  
20 specifically for that purpose. They conducted interviews  
21 and then characterized the evidence as they were able to  
22 adduce it, characterized their perception of what they  
23 learned in the interviews, and presented that to the board  
24 of PCS 2000, which, in turn, made it available to the  
25 Commission.

1           That report in and of itself acknowledges  
2   infirmities both in its ability of the counsel to conduct  
3   the investigation, the time they had in which to do it, the  
4   conflicting testimony that they were given, and I would  
5   emphasize, Your Honor, that none of this testimony was under  
6   oath. None of it was supported by declarations, affidavits.  
7   Counsel did not even send confirming letters to those  
8   interviewed characterizing their interviews and giving them  
9   the opportunity to rebut.

10           We believe it is hearsay of the grossest form, in  
11   some chases third and fourth hand hearsay. The conclusions  
12   are those of counsel retained for a particular party. There  
13   was no opportunity for cross-examination. We do not believe  
14   that document has any probative value. While it may give  
15   the Commission reasonable cause to designate this matter for  
16   hearing, it has no probative value in -- or should have no  
17   probative value in this proceeding. And I think that's one  
18   of the places we have to begin, Your Honor, because that  
19   document and its admissibility is key to this proceeding.

20           JUDGE STEINBERG: Mr. Weber?

21           MR. WEBER: Your Honor, I am actually a little  
22   baffled by this discussion. I mean, I see it as grossly  
23   premature -- nobody at this point has tried to offer  
24   anything into evidence -- to be discussing whether or not it  
25   should be allowed. And I guess the discussion would be

1 better if and when at the point the Bureau attempts to offer  
2 the independent counsel's report into evidence. We are not  
3 doing so at this time.

4 JUDGE STEINBERG: Okay. I was just trying to get  
5 an idea of what type of hearing I am facing. Is it going to  
6 be mostly paper or mostly witnesses?

7 MR. CARROCCIO: Your Honor, I hate to keep going  
8 back to the same document. That document lists several  
9 people who were interviewed, and characterizes their  
10 interviews. If that document is going to be admitted, then  
11 the number of witnesses that we will need to depose and to  
12 potentially present to Your Honor expands exponentially.  
13 That's why we don't view it as being a premature issue at  
14 this time.

15 There are documents cited in that record -- in  
16 that report that we believe may stand on their own, but must  
17 be supported appropriately. If they are going to be  
18 supported by the report and only by the report, then we have  
19 a different burden both as to discovery and the presentation  
20 of evidence. That's why at this time I'm not trying to  
21 complicate things at this stage of the proceeding, but I  
22 can't honestly give you a reasonable answer in that regard  
23 until I know where that document stands.

24 JUDGE STEINBERG: Okay. I really can't rule on  
25 that now inasmuch as it hasn't been offered, and it might

1 be, it might not be. But if it is offered, it's subject to  
2 all the objections to which you refer, and my advice would  
3 be to -- I mean, I don't like to rely on hearsay and second  
4 and third and fourth information when firsthand information  
5 is available.

6 But on the other hand, if it was a document that  
7 the Commission relied on, it might be admissible for  
8 official notice purposes or something, but maybe not for the  
9 truth of the matters asserted therein purposes.

10 I mean, without seeing the document, without  
11 knowing anything more about it than what I have read in the  
12 designation order and what you said, I am really not in a  
13 position to rule on it. But my advice would be with respect  
14 to discovery, which we will want to get to later, that you  
15 would be doing discovery and it's a document that exists.

16 MR. CARROCCIO: Your Honor.

17 JUDGE STEINBERG: Well, not didn't exist but --

18 MR. CARROCCIO: Right. As we said, Your Honor, we  
19 view it as a legitimate basis for Commission concern. We do  
20 not view it as having probative value in a -- for resolution  
21 of the issues.

22 JUDGE STEINBERG: Okay, let's turn to discovery.

23 MR. CARROCCIO: Sure.

24 JUDGE STEINBERG: Do you plan to do discovery?

25 Obviously, you do.

1 MR. CARROCCIO: We do, Your Honor. We have  
2 already presented the Commission with FOIA requests, and  
3 have discussed very preliminarily a couple of the subjects  
4 of the FOIA requests with Bureau counsel. Specifically, the  
5 deposition transcripts, the four of them that are cited in  
6 the hearing designation order.

7 We understand, and Bureau counsel can correct me  
8 if I'm mischaracterizing this, we understand that three of  
9 those transcripts will be made available to us in their  
10 entirety: Mr. Lamoso, Ms. Milstein and Ms. Makris.

11 With regard to the fourth deposition transcript --

12 JUDGE STEINBERG: Ms. Hamilton.

13 MR. CARROCCIO: -- Ms. Hamilton, that is being  
14 subjected to or Ms. Hamilton is being given the opportunity  
15 to redact that transcript. Apparently a fairly substantial  
16 portion of the transcript went to personal issues regarding  
17 Ms. Hamilton. They were raised in a report filed with the  
18 Commission by the Easton interests.

19 JUDGE STEINBERG: That's the Gutierrez report.

20 MR. CARROCCIO: Excuse me?

21 JUDGE STEINBERG: Is that the Gutierrez report?

22 MR. CARROCCIO: That is, Your Honor.

23 And in paragraph 41 of the HDO, it's noted that  
24 the Commission believes that, and they cite the Bureau's  
25 deposition, it indicates that Ms. Hamilton successfully

1 answered all notable allegations raised against her.

2 We have been assured or we understand, at least,  
3 that the redactions will be no more than are necessary to  
4 preserve the privacy of Ms. Hamilton. And in that light,  
5 both of the Westel parties and Mr. Breen see no reason to  
6 intrude into her private life, and we stand ready at this  
7 time to accept that document in its redacted form.

8 Of course, should something arise where Ms.  
9 Hamilton's credibility is called into question and those  
10 redacted portions become relevant, we may have to revisit  
11 it. But we do not anticipate that.

12 In our interviews of Ms. Hamilton and  
13 correspondence with her, we have found her testimony to be  
14 very consistent, both with the facts as we understand them  
15 and with her original declaration that she provided to the  
16 Commission.

17 So in that regard, we don't anticipate any  
18 problems.

19 JUDGE STEINBERG: Okay.

20 MR. CARROCCIO: Further, Your Honor, we have some  
21 additional matters that we believe will be the subject of  
22 FOIA requests, and we believe it would be appropriate to  
23 take certain depositions of witnesses.

24 JUDGE STEINBERG: Okay. Could you send me copies  
25 of the FOIA requests?



1 MR. CARROCCIO: Oh, absolutely, Your Honor.

2 JUDGE STEINBERG: So that I know what's going on?

3 MR. CARROCCIO: Absolutely.

4 JUDGE STEINBERG: With respect to discovery  
5 matters, the way the rules are set up now with respect to  
6 documents and things like that, you just serve each other.  
7 You don't go through me. There doesn't have to be a motion  
8 to produce. You just ask for production. And then if they  
9 don't get it to you, then there is a motion to compel.

10 But if you could send me copies of all the  
11 materials so that I know what's going on, I would appreciate  
12 it.

13 And also, we have been having a little bit of  
14 trouble -- we being the judges -- have been having a little  
15 bit of trouble in that sometimes we don't receive stamped  
16 copies of pleadings that have been filed with the  
17 Commission. So that if we don't receive courtesy copies,  
18 then we don't know something has been filed.

19 In one particularly embarrassing case that I was  
20 assigned I got a call one day from Peggy Green, who used to  
21 be a board member and is now with the Cable Bureau, asking  
22 me if I ruled on the settlement request. And my request  
23 was, "What settlement request?" And apparently the parties  
24 to the case filed a settlement package two months before the  
25 phone call, and I never got a stamped copy of it nor did I